

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 03-31932

MEDEX REGIONAL LABORATORIES, LLC

Debtor

THE OFFICIAL UNSECURED CREDITORS
COMMITTEE OF MEDEX REGIONAL
LABORATORIES, LLC

Plaintiff

v.

Adv. Proc. No. 03-3201

WELLMONT HEALTH SYSTEM,
GARY L. ADELSON, G. ROBERT AINSLIE,
ELIZABETH B. BROWN, JANET BROWN,
EDWARD G. BUSH, PETER F. GALE,
EDDIE ALLEN GEORGE, MARCUS CLARK GRIMES,
PAT HICKIE, MICHAEL EUGENE LADD,
GEORGE MACIONE, STEVEN NEWMAN,
ED OLLIE, RICHARD RAY, FIELDING ROLSTON,
T. ARTHUR SCOTT, and PAUL J. SIDES

Defendants

MEMORANDUM

APPEARANCES: GENTRY, TIPTON & McLEMORE, P.C.
Maurice K. Guinn, Esq.
E. Jerome Melson, Esq.
Post Office Box 1990
Knoxville, Tennessee 37901
Attorneys for Plaintiff, the Official Unsecured Creditors Committee

MICHAEL A. FAULK, ESQ.
Post Office Box 2080
Church Hill, Tennessee 37642-2080
Attorney for Defendant G. Robert Ainslie

MCKINNON, FOWLER, FOX & TAYLOR

Arthur M. Fowler, Esq.
130 East Market Street
Johnson City, Tennessee 37604
Attorneys for Defendants, Stephen Newman,
Edward G. Bush, and Richard Ray

LONG, RAGSDALE & WATERS, P.C.

R. Louis Crossley, Esq.
Garrett P. Swartwood, Esq.
1111 Northshore Drive, Suite S-700
Knoxville, Tennessee 37919-4074
Attorneys for Defendants, Gary L. Adelson, Peter F. Gale,
Marcus Clark Grimes, and Paul J. Sides

TRAUGER, NEY & TUKE

Robert D. Tuke, Esq.
Kathryn A. Stephenson, Esq.
The Southern Turf Building
222 Fourth Avenue North
Nashville, Tennessee 37219-2102
Attorneys for Defendants, Eddie Allen George, Pat Hickie,
Janet Brown, George Macione, Ed Ollie, T. Arthur Scott,
and Fielding Rolston

KRAMER, RAYSON, LEAKE, RODGERS & MORGAN, LLP

William P. Snyder, Esq.
Hugh W. Morgan, Esq.
Post Office Box 629
Knoxville, Tennessee 37901-0629
Attorneys for Defendant Wellmont Health System

MICHAEL EUGENE LADD

#20281-074
Manchester FCI
Post Office Box 3000
Manchester, Kentucky 40962
Pro Se

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

This adversary proceeding is before the court upon the Complaint filed by the Official Unsecured Creditors Committee on December 3, 2003, as amended by an Amended Complaint filed on May 6, 2004, requesting a judgment against the Defendants in the amount of \$15,000,000.00 for breach of fiduciary duty, breach of the duty of care and loyalty owed by the Defendants to the Debtor, abdication of responsibilities, breach of contract, negligent supervision, negligent promotion, negligent hiring, conversion, and negligence, stemming from their positions as governors and managers of the Debtor and conduct engaged in prior to the Debtor's Chapter 11 bankruptcy filing.

On March 25, 2004, the court, on its own motion, entered an Order directing the parties to file by April 14, 2004, written statements indicating whether they consented or did not consent to the entry of final orders and judgments by the bankruptcy judge to the extent that this adversary proceeding has raised issues that are non-core but otherwise related to the Debtor's bankruptcy case. Pursuant thereto, only the Plaintiff timely filed a Statement of Consent. On the other hand, the Defendants Ray, Adelson, Gale, Grimes, Sides, Wellmont Health System, and Ainslie filed statements that they did not consent. The remaining Defendants failed to file written statements within the time proscribed in the court's March 25, 2004 Order. However, on April 26, 2004, the Defendants George, Rolston, Macione, Ollie, Brown, Hickie, and Scott filed a Statement of Consent. Therefore, the Plaintiff and seven Defendants have consented to the entry of final orders and judgments by the bankruptcy judge, and ten Defendants have not consented. One Defendant, Elizabeth B. Brown, has been dismissed.

The court then entered an Order on April 21, 2004, directing the Plaintiff to file a memorandum of law showing cause why the court should not voluntarily abstain from hearing the adversary proceeding. Pursuant to this Order, on May 5, 2004, the Plaintiff filed its Memorandum on Voluntary Abstention, stating that it could not, in good faith, articulate a reason why the court should not voluntarily abstain from hearing the adversary proceeding.

Jurisdiction over bankruptcy matters is exclusive to the federal courts pursuant to 28 U.S.C.A. § 1334, which provides, as follows:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c) (1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(c) (2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under this subsection (other than a decision not to abstain in a proceeding described in subsection (c) (2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11,

United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.

28 U.S.C.A. § 1334 (West 1993 & Supp. 2004). Section 1334 is supplemented by 28 U.S.C.A. § 157 (West 1993 & Supp. 2004), which allows bankruptcy courts to hear “core proceedings” arising under title 11 or arising in a case under title 11 or non-core proceedings that are nevertheless “related to” bankruptcy proceedings.

Pursuant to § 1334(c) (1), the bankruptcy court may decide, sua sponte, to abstain from hearing either core or non-core proceedings. *Luan Inv. S.E. v. Franklin 145 Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 232 (2d Cir. 2002) (“Permissive abstention . . . under 28 U.S.C. § 1334(c) (1) is left to the bankruptcy court’s discretion.”). Courts generally look to the following factors when making the determination whether to abstain:

(1) the effect or lack thereof on the efficient administration of the estate if a court recommends abstention; (2) the extent to which state law issues predominate over bankruptcy issues; (3) the difficulty or unsettled nature of the applicable law; (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court; (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334; (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case; (7) the substance rather than form of an asserted core proceeding; (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court; (9) the burden of the bankruptcy court's docket; (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties; (11) the existence of a right to a jury trial; and (12) the presence in the proceeding of non-debtor parties.

Beneficial Nat'l Bank USA v. Best Reception Sys., Inc. (In re Best Reception Sys., Inc.), 220 B.R. 932, 953 (Bankr. E.D. Tenn. 1998). Whether to abstain is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A); *Best Reception Systems*, 220 B.R. at 941.

As previously noted, the Plaintiff's Complaint is based upon the following causes of action: (1) breach of fiduciary duty; (2) breach of duty of care and loyalty owed to the Debtor; (3) abdication of responsibilities; (4) breach of contract; (5) negligent supervision; (6) negligent promotion; (7) negligent hiring; (8) conversion; (9) negligence; and (10) misappropriation of \$200,000.00 by Defendant Ladd. Clearly, adjudication of these issues, whether in the Plaintiff's favor or not, could affect the bankruptcy estate. However, none of the primary issues to be adjudicated are bankruptcy related. The vast majority of the Plaintiff's remedies at law are governed by Tennessee statute and common law. Furthermore, all parties to the adversary proceeding have not filed their respective consent to having the bankruptcy judge enter final judgment, and in fact, the Plaintiff itself has acknowledged that the court should voluntarily abstain. Accordingly, because of the complexity of the numerous state law claims involved, the large number of Defendants, the ten days the parties have asked to be set aside for the trial, and the fact that the bankruptcy court can only provide proposed findings of fact and conclusions of law to the district court for de novo review thus confronting the parties with possibility of trying this case twice, the court will exercise its discretion under § 1334(c)(1) and will abstain from hearing this adversary proceeding.¹

¹For a detailed discussion regarding mandatory and permissive abstention, see *Beneficial Nat'l Bank USA v. Best Reception Sys., Inc. (In re Best Reception Sys., Inc.)*, 220 B.R. 932 (Bankr. E.D. Tenn. 1998).

An order consistent with this Memorandum will be entered.

FILED: May 20, 2004

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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Defendants

ORDER

For the reasons set forth in the Memorandum filed this date, the court abstains from hearing this adversary proceeding pursuant to 11 U.S.C.A. § 1334(c)(1) (West 1993).

SO ORDERED.

ENTER: May 20, 2004

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE